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APPENDIX C

The North Platte Decree
325 U.S. 665 (1945),
as modified
345 U.S. 981 (1953).

DECREE.

This cause having been heretofore submitted on the report of the Special Master and the exceptions of the parties thereto, and the Court being now fully advised in the premises:

It is ordered, adjudged and decreed that:

I. The State of Colorado, its officers, attorneys, agents and employees, be and they are hereby severally enjoined

(a) From diverting or permitting the diversion of water from the North Platte River and its tributaries for the irrigation of more than a total of 145,000 acres of land in Jackson County, Colorado, during any one irrigation season;

(b) From storing or permitting the storage of more than a total amount of 17,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County, Colorado, between October 1 of any year and September 30 of the following year;

(c) From exporting out of the basin of the North Platte River and its tributaries in Jackson County, Colorado, to any other stream basin or basins more than 60,000 acre feet of water in any period of ten consecutive years reckoned in continuing progressive series beginning with October 1, 1945.

II. Exclusive of the Kendrick Project and Seminoe Reservoir the State of Wyoming, its officers, attorneys,

agents and employees, be and they are hereby severally enjoined

(a) From diverting or permitting the diversion of water from the North Platte River above the Guernsey Reservoir and from the tributaries entering the North Platte River above the Pathfinder Dam for the irrigation of more than a total of 168,000 acres of land in Wyoming during any one irrigation season.

(b) From storing or permitting the storage of more than a total amount of 18,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries above the Pathfinder Reservoir between October 1 of any year and September 30 of the following year.

III. The State of Wyoming, its officers, attorneys, agents and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova and Glendo Reservoirs otherwise than in accordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;
Second, Guernsey Reservoir;
Third, Seminoe Reservoir;
Fourth, Alcova Reservoir; and
Fifth, Glendo Reservoir;

Provided, however that water may be impounded in or released from Seminoe Reservoir, contrary to the foregoing rule of priority operation for use in the generation of electric power when and only when such storage or release will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals. Storage rights of Glendo Reservoir shall be subject to the provisions of this paragraph III.

IV. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova, and Glendo Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said five reservoirs and said Casper Canal, and which said Nebraska appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre feet fixed as follows:

Lands	Canal	Limitation in Sec. Feet	Seasonal Limitation in Acre Ft.
Tract of 1025 acres	French	15	2,227
Mitchell Irrigation District	Mitchell	195	35,000
Gering Irrigation District	Gering	193	36,000
Farmers Irrigation District	Tri-State	748	183,050
Ramshorn Irrigation District	Ramshorn	14	3,000

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the portion of its share which shall be delivered into the Interstate, Fort Laramie, French and Mitchell Canals for use on the Nebraska lands served by these canals. The State of Nebraska, its officers, attorneys, agents and employees, and the State of Wyoming, its officers, attorneys, agents and employees, are hereby enjoined and restrained from diversion or use contrary to

this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and computations for that day, and provided further, that unless and until Nebraska, Wyoming and the United States agree upon a modification thereof, or upon another formula, reservoir evaporation and transportation losses in the segregation of natural flow and storage shall be computed in accordance with the following formula taken from United States' Exhibit 204A and the stipulation of the parties dated January 14, 1953, and filed on January 30, 1953:

Reservoir Evaporation Losses.

Seminoe, Pathfinder and Alcova Reservoirs.

Evaporation will be computed daily based upon evaporation from Weather Bureau Standard 4 foot diameter Class "A" pan located at Pathfinder Reservoir. Daily evaporation will be multiplied by area of water surface of reservoir in acres and by co-efficient of 70% to reduce pan record to open water surface.

Glendo and Guernsey Reservoirs.

Compute same as above except use pan evaporation at Whalen Dam.

River Carriage Losses.

River carriage losses will be computed upon basis of area of river water surface as determined by aerial surveys made in 1939 and previous years and upon average monthly evaporation at Pathfinder reservoir for the period 1921 to 1939, inclusive, using a co-efficient of 70% to reduce pan records to open water surface.

Daily evaporation losses in second-feet for various sections of the river are shown in the following table:

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TABLE

Area		Daily Loss—Second Fleet					
River Section	Acres	May	June	July	Aug.	Sept.	
Alcova to Glendo Reservoir	6,740	43	61	70	61	45	
Guernsey Reservoir to Whalen	560	4	5	6	5	4	
Whalen to State Line	2,430	16	22	25	22	16	

Above table is based upon mean evaporation at Pathfinder as follows: May .561 ft.; June .767 ft.; July .910 ft.; Aug. .799 ft.; Sept. .568 ft. Co-efficient of 70% to reduce pan record to open water surface.

Above table does not contain computed loss for section of river from Glendo Dam to head of Guernsey Reservoir (area 680 acres) because this area is less than submerged area of original river bed (940 acres) in Glendo Reservoir and is, therefore, considered as off-set.

Above table does not contain computed loss for section of river from Pathfinder Dam to head of Alcova Reservoir (area 170 acres) because this area is less than submerged area of original river bed in Alcova Reservoir and is, therefore, considered as off-set.

Likewise the area between Seminoe Dam and head of Pathfinder Reservoir is less than area of original river bed through Pathfinder reservoir—considered as off-set. Evaporation losses will be divided between natural flow and storage water flowing in any section of river channel upon a proportional basis. This proportion will ordinarily be determined at the upper end of the section except under conditions of intervening accruals or diversions that materially change the ratio of storage to natural flow at the lower end of the section. In such event the average proportion for the section will be determined by using the mean ratio for the two ends of the section.

In the determination of transportation losses for the various sections of the stream, such time intervals for the passage of water from point to point shall be used

as may be agreed upon by Nebraska, Wyoming and the United States, or in the absence of such agreement, as may be decided upon from day to day by the manager of the government reservoirs, with such adjustments to be made by said manager from time to time as may be necessary to make as accurate a segregation as is possible.

VI. This decree is intended to and does deal with and apportion only the natural flow of the North Platte River. Storage water shall not be affected by this decree and the owners of rights therein shall be permitted to distribute the same in accordance with any lawful contracts which they may have entered into or may in the future enter into, without interference because of this decree.

VII. Such additional gauging stations and measuring devices at or near the Wyoming-Nebraska state line, if any, as may be necessary for making any apportionment herein decreed, shall be constructed and maintained at the joint and equal expense of Wyoming and Nebraska to the extent that the costs thereof are not paid by others.

VIII. The State of Wyoming, its officers, attorneys, agents and employees be and they are hereby severally enjoined from diverting or permitting the diversion of water from the North Platt River or its tributaries at or above Alcova Reservoir in lieu of or in exchange for return flow water from the Kendrick Project reaching the North Platte River below Alcova Reservoir.

IX. The State of Wyoming and the State of Colorado be and they hereby are each required to prepare and maintain complete and accurate records of the total area of land irrigated and the storage and exportation of the water of the North Platte River and its tributaries within those portions of their respective jurisdictions covered by the provisions of paragraphs I and II hereof, and such records shall be available for inspection at all reasonable times; provided, however, that such records shall not be required in reference to the water uses permitted by paragraph X hereof.

X. This decree shall not affect or restrict the use or diversion of water from the North Platte River and its tributaries in Colorado or Wyoming for ordinary and usual domestic, municipal and stock watering purposes and consumption.

XI. For the purposes of this decree:

- (a) "Season" or "seasonal" refers to the irrigation season, May 1 to September 30, inclusive;
- (b) The term "storage water" as applied to releases from reservoirs owned and operated by the United States is defined as any water which is released from reservoirs for use on lands under canals having storage contracts in addition to the water which is discharged through those reservoirs to meet natural flow uses permitted by this decree;
- (c) "Natural flow water" shall be taken as referring to all water in the stream except storage water;
- (d) Return flows of Kendrick Project shall be deemed to be "natural flow water" when they have reached the North Platte River, and subject to the same diversion and use as any other natural flow in the stream.

XII. This decree shall not affect:

- (a) The relative rights of water users within any one of the States who are parties to this suit except as may be otherwise specifically provided herein;
- (b) Such claims as the United States has to storage water under Wyoming law; nor will the decree in any way interfere with the ownership and operation by the United States of the various federal storage and power plants, works and facilities[;]
- (c) The use or disposition of any additional supply or supplies of water which in the future may be imported into the basin of the North Platte River

from the water shed of an entirely separate stream, and which presently do not enter said basin, or the return flow from any such supply or supplies[;]

(d) The apportionment heretofore made by this Court between the States of Wyoming and Colorado of the waters of the Laramie River, a tributary of the North Platte River;

(e) The apportionment made by the compact between the States of Nebraska and Colorado, apportioning the water of the South Platte River.

XIII. Any of the parties may apply at the foot of this decree for its amendment or for further relief, except that for a period of five years from and after June 15, 1953 the State of Colorado shall not institute any proceedings for the amendment of the decree or for further relief. In the event that within said period of five years any other party applies for an amendment of the decree or for further relief, then the State of Colorado may assert any and all rights, claims or defenses available to it under the decree as amended. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

(a) The question of the applicability and effect of the Act of August 9, 1937, 50 Stat. 564, 595-596; upon the rights of Colorado and its water users when and if water hereafter is available for storage and used in connection with the Kendrick Project in Wyoming[;]

(b) The question of the effect upon the rights of upstream areas of the construction or threatened construction in downstream areas of any projects not now existing or recognized in this decree;

(c) The question of the effect of the construction or threatened construction of storage capacity not now existing on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir;

(d) The question of the right to divert at or above the headgate of the Casper Canal any water in lieu of, or in exchange for, any water developed by artificial drainage to the river of sump areas on the Kendrick Project;

(e) Any question relating to the joint operation of Pathfinder, Guernsey, Seminoe and Alcova Reservoirs whenever changed conditions make such joint operation possible;

(f) Any change in conditions making modification of the decree or the granting of further relief necessary or appropriate.

XIV. The costs in this cause shall be apportioned and paid as follows: the State of Colorado one-fifth; the State of Wyoming two-fifths; and the State of Nebraska two-fifths. Payment of the fees and expenses of the Special Master has been provided by a previous order of this Court.

XV. The clerk of this Court shall transmit to the chief magistrates of the States of Colorado, Wyoming, and Nebraska, copies of this decree fully authenticated under the seal of this Court.

XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation or construction of the Act of August 9, 1937 (50 Stat. 564-595) shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII. When the Glendo Dam and Reservoir are constructed, the following provisions shall be effective:

(a) The construction and operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The construction and operation of Glendo Reservoir shall not affect the regimen of the natural flow of the North Platte River above Pathfinder Dam. The regimen of the natural flow of the North Platte River below Pathfinder Dam shall not be changed, except that not more than 40,000 acre feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of this decree may be stored in the Glendo Reservoir during any water year, in addition to evaporation losses on such storage, and, further, the amount of such storage water that may be held in storage at any one time, including carryover storage, shall never exceed 100,000 acre feet. Such storage water shall be disposed of in accordance with contracts to be hereafter executed, and it may be used for the irrigation of lands in the basin of the North Platte River in western Nebraska to the extent of 25,000 acre feet annually, and for the irrigation of lands in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir to the extent of 15,000 acre feet annually, provided that it shall not be used as a substitute for storage water contracted for under any existing permanent arrangements. The above limitation on storage of natural flow does not apply to flood water which may be temporarily stored in any capacity allocated for flood control in the Glendo Reservoir, nor to water originally stored in Pathfinder Reservoir which may be temporarily re-stored

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in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; nor to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit dated December 1952, for the purpose of creating a head for the development of water power.



APPENDIX D

No. 108, Original

**IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1993**

STATE OF NEBRASKA,

Plaintiff,

v.

STATE OF WYOMING,

Defendant.

**AMENDED PETITION FOR AN ORDER
ENFORCING DECREE, FOR INJUNCTIVE RELIEF,
AND FOR MODIFICATION OF THE DECREE TO
SPECIFY AN OPPORTIONMENT OF
THE NATURAL FLOWS OF THE
LARAMIE RIVER BELOW WHEATLAND
AND TO APPORTION THE UNAPPORTIONED
NATURAL FLOWS OF THE
NORTH PLATTE RIVER**

The State of Nebraska hereby petitions the Court for an order protecting and enforcing the equitable apportionment established by the Court through the provisions of its Decree of October 8, 1945, *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), as interpreted on April 20, 1993, *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), granting injunctive relief against the State of Wyoming and the United States of America, modifying the Decree to specify an apportionment of the natural flows of the Laramie River below Wheatland during the irrigation season, and apportion-

ing the unapportioned natural flows of the North Platte River during the non-irrigation season. In support hereof, Nebraska states:

COUNT I

1. In *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), as interpreted in *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), the Court equitably apportioned the natural flows of the North Platte River during the irrigation season, and partially apportioned the natural flows during the non-irrigation season, among the states of Nebraska, Wyoming, and Colorado, except that it did not affirmatively preclude depletion of the contributions of the Laramie River to the critical Guernsey Dam to Tri-State Dam reach of the North Platte River, notwithstanding that such flows were expected to continue.
2. The Decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), specifies the State of Colorado's equitable apportionment in its entirety, during the irrigation season and during the non-irrigation season, by enjoining Colorado: (a) From diverting or permitting the diversion of water from the North Platte River and its tributaries for the irrigation of more than a total of 145,000 acres of land in Jackson County, Colorado, during any one irrigation season; (b) from storing more than 17,000 acre feet of water from the North Platte River and its tributaries in Jackson County, Colorado, between October 1 of any year and September 30 of the following year; and (c) from exporting more than 60,000 acre feet of water out of the basin of the North Platte River and its tributaries in Jackson County, Colorado, in any period of 10 consecutive years.
3. In *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), the Court equitably apportioned the natural flows of the North Platte River during the irrigation season in the Guernsey Dam

to Tri-State Dam reach of the river, 75% to Nebraska and 25% to Wyoming, and imposed restrictions on the use of the waters of the North Platte River and certain of its tributaries in Wyoming to ensure, to the extent possible, that dependable and usable inflows would accrue to the reach from the upstream reaches and through accretions within the reach.

4. The Decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), contained only those injunctions deemed necessary in 1945 to ensure that dependable and usable inflows would accrue to the Guernsey Dam to Tri-State Dam reach from the upstream reaches and through accretions within the reach to effectuate the apportionment of the total natural flows in the reach.

5. The Court in *Nebraska v. Wyoming*, 325 U.S. 589 (1945), modified, 345 U.S. 981 (1953), expressly declined to impose additional injunctions on the use or development of the natural flows arising above and within the Guernsey Dam to Tri-State Dam reach of the river in the absence of a contemporaneous threat of development, notwithstanding that the flows were expected to continue to provide dependable and usable inflows that would accrue to the reach from upstream reaches and through accretions within the reach.

6. The Decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981, as interpreted in *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), did not specify the apportionment of the contributions of the Laramie River accruing within the Guernsey Dam to Tri-State Dam reach by injunction or other restrictions because there was no contemporaneous threat of further depletions to those flows.

7. While the Court in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), did not apportion storage water, except as specified in

¶ XVII of the Decree, the equitable apportionment was premised on the recognition that Pathfinder, Seminoe, Alcova, Guernsey, and Glendo reservoirs store North Platte River water and would be operated to serve the same lands for which natural flows are apportioned, as well as for certain other lands in Nebraska and Wyoming.

8. Pursuant to *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), the Decree enjoins the storage of waters other than in accordance with the relative priorities, as among themselves, of Pathfinder, Guernsey, Seminoe, Alcova, and Glendo reservoirs, defined and fixed in that order, and provides that these reservoirs be operated junior to the priorities of the French Canal and the State Line Canals.

9. Pursuant to *Nebraska v. Wyoming*, 325 U.S. 589 (1945), modified 345 U.S. 981 (1953), as interpreted in *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), the Inland Lakes have a right to accrue 46,000 acre feet of natural flow in the lakes during the months of October, November, and April, with a priority date of December 6, 1904, and to temporarily store the water in Glendo and Guernsey reservoirs during the non-irrigation season.

10. Pursuant to *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), the Decree requires Wyoming to prepare and maintain complete and accurate records of the total area of land irrigated and the storage of the water of the North Platte River and its tributaries.

11. The State of Wyoming is presently violating and threatens to violate the State of Nebraska's equitable apportionment established by the Court by depleting the natural flows of the North Platte River by:

a. The proposed construction of storage capacity on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir;

- b. Reducing the flow of tributaries entering the North Platte River below Alcova by means of groundwater development, the depletion of return flows, and the construction of reservoirs;
- c. Reducing the flow of tributaries and the main-stem in Wyoming, as well as canal and lateral flows reaching Nebraska, by the present and future effects of existing groundwater development and by potential groundwater development for municipal, industrial, and irrigation purposes which would result from favorable action on pending applications to appropriate; and
- d. Failing to maintain complete and accurate records of water uses set forth in the Decree as is necessary to monitor compliance with the Decree.

12. The State of Wyoming is presently violating and threatens to violate the State of Nebraska's equitable apportionment established by the Court by depleting the natural flows of the North Platte River by such projects as the proposed Deer Creek Project, reregulating reservoirs and canal linings in the Goshen Irrigation District and the Horse Creek Conservancy District, and by permitting unlimited depletion of groundwater that is hydrologically connected to the North Platte River and its tributaries.

13. The current and imminent actions of the State of Wyoming contravene the Court's opinions in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), and the Court's decision in *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), and upset the equitable balance of the North Platte River established in the Decree.

14. Despite the State of Nebraska's efforts to resolve these matters, the State of Wyoming has refused to alter its actions and continues to upset the equitable appor-

tionment established by the Court through the provisions of its Decree.

15. The State of Wyoming's present and threatened actions are causing and will cause irreparable injury to the State of Nebraska and its citizens.

16. The State of Nebraska has no effective remedy at law to enforce its rights against the State of Wyoming. Injunctive relief is necessary to protect and enforce the equitable apportionment and to restrain further violations of the Decree by the State of Wyoming.

17. The Court expressly retained jurisdiction to resolve the present controversy in ¶ XIII of the Decree of October 8, 1945, as modified on June 15, 1953, which provides:

The Court retains jurisdiction of this suit for the purpose of any order, direction, or modication of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

* * *

(c) The question of the effect of the construction or threatened construction of storage capacity not now existing on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir;

* * *

(f) Any change in conditions making modification of the decree or the granting of further relief necessary or appropriate.

325 U.S. at 671-72.

WHEREFORE, the State of Nebraska prays that the Court enter its order requiring the State of Wyoming to

comply with the provisions of the Decree of October 8, 1945, as modified on June 15, 1953, and interpreted on April 20, 1993, and enjoining the State of Wyoming from increasing its depletion of the natural flows of the North Platte River in violation of the State of Nebraska's apportionment under the Decree.

COUNT II

1. The allegations of Count I are adopted and incorporated herein.
2. The Decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), apportioned the natural flows of the North Platte River among the states of Nebraska, Wyoming, and Colorado during the irrigation season, except for the inflows of the Laramie River to the Guernsey Dam to Tri-State Dam reach, and partially apportioned the natural flows during the non-irrigation season.
3. As amended in *Nebraska v. Wyoming*, 345 U.S. 981 (1953), the Decree states that the State of Wyoming, pursuant to contracts entered between irrigation water users and the U.S. Bureau of Reclamation, is entitled to 15,000 acre feet of Glendo Reservoir storage water to be used for the irrigation of lands in the North Platte River Basin in southeastern Wyoming below Guernsey Dam.
4. The United States is presently violating and threatens to violate the State of Nebraska's equitable apportionment established in the Decree by contracting for the use of Glendo Reservoir water for other than authorized purposes in the basin of the North Platte River in southeastern Wyoming below Guernsey Reservoir.
5. The current and imminent actions of the United States violate the Decree and upset the equitable balance of the North Platte River established by the Court.

6. Despite the State of Nebraska's efforts to resolve these matters, the United States has refused to alter its actions and continues to violate the Decree.

7. The United States' present and threatened violations of the Decree are causing and will cause irreparable injury to the State of Nebraska and its citizens.

8. The State of Nebraska has no effective remedy at law to enforce its rights against the United States. Injunctive relief is necessary to enforce the Decree and to restrain further violations by the United States.

WHEREFORE, the State of Nebraska prays that the Court enter its order construing the Decree and requiring the United States to comply with the provisions of the Decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), and enjoining the United States from violating the State of Nebraska's apportionment under the Decree.

COUNT III

1. The allegations of Counts I and II are adopted and incorporated herein.

2. While the Court's decision in *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), establishes that the inflows of the Laramie River to the Guernsey Dam to Tri-State Dam reach of the North Platte River during the irrigation season were not affirmatively specified as part of the apportionment of the inflows accruing to the reach from the upstream reaches and the other accretions within the reach, the decision recognizes that the Court in 1945 "expected that some Laramie water would contribute to the natural flows available for apportionment in the [Guernsey Dam to Tri-State Dam] reach." *Nebraska v. Wyoming*, 113 S.Ct. at 1698.

3. The Grayrocks Project is a post-Decree reservoir located in Wyoming on the Laramie River below Wheat-

land, operated by Basin Electric Power Cooperative. During construction of the project, the State of Nebraska challenged its legality. *Nebraska v. Rural Electrification Admin.*, 12 Env't Rep. Cas. (BNA) 1156 (D. Neb. 1978), *appeal dismissed*, 594 F.2d 870 (8th Cir. 1979). The litigation was settled by an agreement entitled Agreement of Settlement and Compromise dated December 4, 1978 ("Grayrocks Settlement Agreement"). In exchange for Basin Electric guaranteeing to operate the project to ensure the delivery of specified quantities of water to the confluence of the Laramie and North Platte rivers, Nebraska and other plaintiffs agreed to withdraw their objections to the project. The State of Wyoming, while encouraged to participate in the Agreement in order to resolve any outstanding controversies, refused to become a party to the litigation or the Grayrocks Settlement Agreement.

4. The State of Nebraska has historically relied on and continues to rely on the contributions of the Laramie River to the North Platte River as an important component of the natural flows apportioned in the critical Guernsey Dam to Tri-State Dam reach, in satisfaction of the guaranteed minimum stream flows set forth in the Grayrocks Settlement Agreement, and for other equities below Tri-State Dam in Nebraska that rely on the Laramie inflows to the North Platte River during the irrigation and non-irrigation seasons.

5. Wyoming has refused to honor, and has in fact sanctioned depletions, of the minimum flows guaranteed by the Grayrocks Settlement Agreement.

6. The State of Wyoming is presently causing injury to and threatens to further injure beneficial uses of and equitable reliance on the inflows of the Laramie River in existence before and after the entry of the Decree in 1945, including depletions of the minimum flows guaranteed by the Grayrocks Settlement Agreement by:

- a. The proposed construction of additional river pumping, diversion, and storage facilities at the confluence of the Laramie and the North Platte rivers;
 - b. The construction and use of new pumping facilities on the Laramie River;
 - c. The construction of facilities to reregulate, store, and consume return flows;
 - d. Reducing the inflows of the Laramie River and its tributaries in Wyoming by the present and future effects of existing and threatened groundwater development; and
 - e. Additional activities which reduce the natural flows of the Laramie River to the North Platte River.
7. The State of Wyoming is presently causing injury to and threatens to further injure beneficial uses of and equitable reliance on the inflows of the Laramie River in existence before and after the entry of the Decree in 1945, including depletions of the minimum flows guaranteed by the Grayrocks Settlement Agreement, by such projects as the proposed Corn Creek Project, Goshen Irrigation District's river pumps, groundwater pumping, and surface water depletions.
8. The current and imminent actions of the State of Wyoming contravene the Court's opinions in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), and the Court's recent decision, *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), upset the equitable balance of the North Platte River established in the Decree, threaten the continuation of the guaranteed minimum flows set forth in the Grayrocks Settlement Agreement, and threaten to upset the equitable reliance on North Platte River waters in Nebraska.
9. Despite the State of Nebraska's efforts to resolve these matters, the State of Wyoming has refused to alter

its actions and continues to upset Nebraska's equitable apportionment and threaten Nebraska's equitable reliance on these waters.

10. The State of Wyoming's present and threatened actions are causing and will cause irreparable injury to the State of Nebraska and its citizens.

11. The State of Nebraska has no effective remedy at law to enforce its rights against the State of Wyoming. Injunctive relief is necessary to protect equitable interests in Nebraska and to restrain further violations by the State of Wyoming.

12. The Court expressly retained jurisdiction to resolve the present controversy in ¶ XIII of the Decree of October 8, 1945, as modified on June 15, 1953, which provides:

The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

* * *

(f) Any change in conditions making modifications of the decree or the granting of further relief necessary or appropriate.

325 U.S. at 671-72.

WHEREFORE, the State of Nebraska prays that the Court specify that the inflows of the Laramie River below Wheatland are a component of the equitable apportionment of the natural flows in the Guernsey Dam to Tri-State Dam reach, 75% to Nebraska and 25% to Wyoming, and enjoin the State of Wyoming from depleting Nebraska's equitable share of the Laramie River's contribution to the North Platte River and from impeding or

interfering with releases of water from Grayrocks Dam and Reservoir pursuant to the Grayrocks Settlement Agreement.

COUNT IV

1. The allegations of Counts I, II, and III are adopted and incorporated herein.

2. The Decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), equitably apportions the natural flows of the North Platte River during the irrigation season among the states of Nebraska, Wyoming, and Colorado, except that it does not specify an apportionment of the contributions of the Laramie River to the critical Guernsey Dam to Tri-State Dam reach of the North Platte River, notwithstanding that such flows were expected to continue.

3. The Court in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), partially apportioned the natural flows of the North Platte River during the non-irrigation season by regulating the storage or accrual of natural flow by:

a. Enjoining Wyoming from storing more than 18,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries above Pathfinder Reservoir during each water year, i.e., October 1 through September 30;

b. Enjoining Colorado from storing more than 17,000 acre feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County, Colorado, during each water year;

c. Enjoining Wyoming from storing water out of priority with respect to specified reservoirs, except for out of priority storage or releases from Seminoe Reservoir for the generation of electricity if such storage or releases do not materially interfere with irrigation by the French Canal and the State Line Canals;

- d. Enjoining Colorado from exporting more than 60,000 acre feet of water out of the basin of the North Platte River and its tributaries in Jackson County, Colorado, in any period of 10 consecutive years; and
 - e. Apportioning the accrual of 46,000 acre feet during the months of October, November, and April to Nebraska for storage in the Inland Lakes.
4. The Decree specifies the State of Colorado's equitable apportionment in its entirety, during the irrigation season and during the non-irrigation season.
5. Except as specified in ¶ 3, *supra*, the non-irrigation season flows of the North Platte River were not equitably apportioned in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), as interpreted in *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), notwithstanding that the Court sought to balance the equities among the states of Nebraska, Wyoming, and Colorado to provide certainty and resolve future disputes.
6. Since the equitable apportionment was effectuated in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945), modified, 345 U.S. 981 (1953), there have been changes in conditions making modification of the Decree or the granting of further relief necessary and appropriate.
7. Since the entry of the Decree, the unapportioned non-irrigation season flows of the North Platte River have been and continue to be relied upon by equitable interests in the State of Nebraska, including irrigation, hydroelectric power production, water-cooled electric power production, municipalities, recreation, and fish and wildlife, including endangered and threatened species.
8. The demand for unapportioned non-irrigation season flows by equities in Nebraska presently beneficially using such water exceeds the supply.

9. Numerous existing and proposed developments in Wyoming threaten to utilize and deplete the unapportioned non-irrigation season flows of the North Platte River.

10. It is necessary to apportion the unapportioned non-irrigation season flows of the North Platte River to protect downstream equities in Nebraska from upstream development in Wyoming which threatens to deplete these critical but unprotected non-irrigation season flows.

11. As part of the Grayrocks Settlement Agreement entered in 1978, Basin Electric guaranteed to operate the Grayrocks Project to deliver specified quantities of water to the confluence of the Laramie and North Platte rivers during the non-irrigation season.

12. The State of Nebraska has historically relied on and continues to rely on the non-irrigation season contributions of the Laramie River to the North Platte River guaranteed by the Grayrocks Settlement Agreement.

13. The State of Wyoming's existing and proposed actions have depleted and threaten to further deplete the minimum non-irrigation season flows guaranteed by the Grayrocks Settlement Agreement.

14. The allegations contained in this count do not constitute assertions by the State of Nebraska that the storage of water in Grayrocks Reservoir, the present depletions therefrom for the purposes of the Grayrocks Project or the passage through or release of waters from the Grayrocks Reservoir in accordance with the Grayrocks Settlement Agreement, constitute injuries to Nebraska's claim to an equitable share of the non-irrigation season flows of the North Platte River.

15. The current and imminent actions of the State of Wyoming infringe upon Nebraska's equitable share of the North Platte River during the non-irrigation season.

16. Despite the State of Nebraska's efforts to resolve these matters, the State of Wyoming has refused to alter its actions and has continued to assert its alleged right to infringe upon Nebraska's equitable share of the North Platte River during the non-irrigation season.

17. The State of Wyoming's present and threatened actions are causing and will cause irreparable injury to the State of Nebraska and its citizens.

18. The State of Nebraska has no effective remedy at law to enforce its equitable rights against the State of Wyoming. A determination of each state's equitable share and injunctive relief are necessary to restrain further infringement by Wyoming on Nebraska's equitable share of the North Platte River.

19. The Court expressly retained jurisdiction to resolve the present controversy in ¶ XIII of the Decree of October 8, 1945, as modified on June 15, 1953, which provides:

The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

* * *

(f) Any change in conditions making modification of the decree or the granting of further relief necessary or appropriate.

325 U.S. at 671-72.

WHEREFORE, the State of Nebraska prays that the Court equitably apportion the unapportioned non-irrigation season flows of the North Platte River between Nebraska and Wyoming and that the Court enjoin the State

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of Wyoming from depleting Nebraska's equitable share of the North Platte River during the non-irrigation season.

Respectfully submitted,

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APPENDIX E

No. 108, Original

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1993

STATE OF NEBRASKA,

Plaintiff,

v.

STATE OF WYOMING,

Defendant.

**WYOMING AMENDED COUNTERCLAIMS AND
CROSS-CLAIMS**

DEFINITIONS

The terms "Nebraska", "the United States" and "federal reservoirs", as used in this document, are defined as follows:

"Nebraska" means the State of Nebraska, its officials and representatives as well as individual and collective users of water within its borders.

"United States" means the United States of America and each of its agencies, representatives or officials having responsibility for administration or operation of any of the federal reservoirs.

"Federal reservoirs" refers to those reservoirs and related facilities on the North Platte River owned and operated by the United States Bureau of Reclamation as part of the North Platte Project, the Kendrick Project or

the Kortes or Glendo units of the Pick-Sloan Missouri Basin Program.

GENERAL ALLEGATIONS

The General Allegations in paragraphs 1 through 8 and in paragraphs 34 and 35 are incorporated in each of the counterclaims and cross-claims herein.

1. The Court has jurisdiction of the counterclaims asserted against Nebraska and the cross-claims asserted against Colorado under U.S. Const. art. III, § 2, cl. 2, under 28 U.S.C. § 1251(a), and under Paragraph XIII of the decree in *Nebraska v. Wyoming*, 325 U.S. 589, 665 (1945) ("the Decree").
2. The Court has jurisdiction of the cross-claims asserted against the United States herein under U.S. Const. art. III, § 2, cl. 2, under 28 U.S.C. § 1251(b)(2), and under Paragraph XIII of the Decree.
3. In accepting this case, the Court has exercised its retained jurisdiction pursuant to Paragraph XIII of the Decree to consider the need for modification of the Decree in response to a change of conditions that might render the Decree inequitable. Included within the relief available in this case is the addition of injunctive relief or the release of restrictions as necessary to give effect to the apportionment.
4. In 1945, the Court determined that "equitable apportionment does not permit Nebraska to demand direct flow water from above Whalen for use below Tri-State." *Nebraska v. Wyoming*, 325 U.S. 589, 628 (1945). The Court also held,

If, as the United States fears, the decree is administered so as to divert water from above Tri-State to the use of those diverting below Tri-State, application for appropriate relief may be made at the foot of the decree.

Id. at 628-629.

5. The equitable apportionment implemented by the Decree was intended to protect the supply of irrigation water to meet the reasonable beneficial use requirements of the Nebraska lands under canals that divert from the North Platte River at and upstream of Tri-State Dam.

6. The Decree is being administered by Nebraska and the United States in such a way as to result in natural flow and federal storage water from Wyoming being delivered to uses in Nebraska diverting below Tri-State Dam that were not included as part of Nebraska's equitable apportionment of the North Platte River.

7. The United States was granted leave to intervene as a party to this case and, as a result, is bound by the Court's Decree and has consented to the full and complete adjudication of all matters and issues determined in the earlier litigation or reasonably incidental thereto.

8. The cross-claims against the United States are for the purpose of carrying into effect the apportionment determined by the Court in 1945, as modified in 1953. As such, they are assertable against the United States as a party.

FIRST COUNTERCLAIM

9. Nebraska has circumvented and violated the equitable apportionment effected by the Decree, and continues to do so, by the actions set forth in this first counter-claim. Such actions have either violated the Decree or prevented the Decree from carrying into effect the apportionment determined by the Court in its 1945 opinion. As a consequence, the Decree must be enforced, interpreted and modified to add appropriate relief that gives full effect to the apportionment determined by the Court's 1945 opinion.

10. The Court in its April 20, 1993 opinion, *Nebraska v. Wyoming*, 113 S.Ct. 1689 (1993), concluded that Paragraph IV of the Decree does not impose individual ceilings on the amount of water that may be diverted by an individual canal in Nebraska. The Court acknowl-

edged the continuing dispute over the extent to which Paragraph IV limits the call of the Nebraska State Line Canals against the federal reservoirs. Under Paragraph IV, Wyoming is enjoined to administer the federal reservoirs in priority as to the Nebraska State Line Canals only up to the diversion limits fixed in Paragraph IV. When those diversion limits are exceeded, Wyoming is under no obligation to regulate the storage of water in the federal reservoirs to make water available for diversion by the State Line Canals.

11. Nebraska has circumvented and violated the equitable apportionment by demanding natural flow water for diversion by irrigation canals at and above Tri-State Dam in excess of the beneficial use requirements of the Nebraska lands entitled to water from those canals under the Decree and by demanding that the federal reservoirs in Wyoming, which are described in Paragraph IV of the Decree, bypass water to the Nebraska State Line Canals in excess of the diversion limitations and seasonal volumetric limitations fixed in Paragraph IV of the Decree.

12. In recent years the United States has placed a call against water rights in Wyoming that are junior to the water storage rights of the federal reservoirs and Wyoming officials have administered that call by regulating or curtailing such junior diversions in Wyoming. No such call had ever been placed before 1988.

13. As a result of Nebraska demanding and the United States delivering more water through the federal reservoirs than the Nebraska canals are entitled to under the equitable apportionment, storage in the federal reservoirs has been depleted or foregone, thereby increasing the call by the federal reservoirs to the injury of junior water rights in Wyoming. Nebraska and the United States have failed and refused to recognize or enforce reasonable limits on the diversions by the Nebraska canals.

14. Nebraska has circumvented and violated the equitable apportionment, and continues to do so, by demand-

ing natural flow and storage water from sources above Tri-State Dam and bypassing it or diverting it for uses below Tri-State Dam that are not recognized or authorized by the Decree. Specific examples of such action include,

- a. Diverting more water than needed for beneficial, irrigation use and returning such water unused through wasteways to the North Platte River below Tri-State Dam;
- b. Knowingly using substantially inflated estimates of the amount of irrigated acreage on which the allowable diversion rates are determined and thereby allowing diversions substantially in excess of the reasonable water requirements of the lands actually irrigated;
- c. Failing to adequately monitor and measure the use of water on Nebraska lands under canals diverting in the Guernsey to Tri-State Dam section of the North Platte River;
- d. Assuming and applying unreasonably large and unsubstantiated transportation losses in the administration of storage water deliveries below Tri-State Dam, resulting in substantial quantities of storage water being passed below Tri-State Dam where such storage water is not used in accordance with the contracts governing its use but is converted from storage water to water available for appropriation by other uses below Tri-State Dam;
- e. Allowing excessive diversions into the Interstate Canal which result in the storage of natural flow in the Inland Lakes during the irrigation season (1) in excess of the right to store up to 46,000 acre-feet of water during October, November and April each year for the Inland Lakes as established by the Court's April 20, 1993 opinion and (2) without regard to whether such water is needed to meet the beneficial use requirements of the lands using water from the Inland Lakes.

WHEREFORE, Wyoming requests the Court to enjoin Nebraska's continuing circumvention and violation of the apportionment, to modify the Decree as necessary to confirm that equitable apportionment does not allow Nebraska to demand direct flow water from Wyoming for use below Tri-State Dam and to modify the Decree as necessary to confirm that, when the water storage rights of the federal reservoirs have not been fully satisfied, those reservoirs may not bypass water to the Nebraska State Line Canals in excess of the diversion limitations or annual volumetric limitations fixed in Paragraph IV of the Decree.

SECOND COUNTERCLAIM

15. Nebraska has violated Paragraph XVII of the Decree by permitting the delivery of storage water from Glendo Reservoir in the amount of 8,000 acre-feet per year to the Central Nebraska Public Power and Irrigation District for uses other than irrigation and for use as a substitute for storage water previously available under permanent arrangements.

WHEREFORE, Wyoming requests the Court to enjoin further violations of Paragraph XVII of the Decree by Nebraska.

THIRD COUNTERCLAIM

16. In the alternative to the second counterclaim, Wyoming asserts that the restrictions on the place and manner of use of water stored in Glendo Reservoir set forth in Paragraph XVII of the Decree are no longer equitable. Conditions have changed so that such limitations on the place and manner of use of Glendo Reservoir storage water prevent the equitable apportionment of the water storable in Glendo Reservoir as originally intended by the parties and the Court when the Decree was amended in 1953.

17. The intent and purpose of the stipulation modifying the Decree in 1953 was to apportion the use of water

stored in Glendo Reservoir in the amount of 25,000 acre-feet per year to Nebraska and 15,000 acre-feet per year to Wyoming.

18. Wyoming and Nebraska have been unable to fully use their respective shares of the Glendo storage water under Paragraph XVII of the Decree within the limitations on place and manner of use imposed by Paragraph XVII. The Decree has failed to carry out the apportionment intended by the 1953 stipulation. The Decree therefore should be modified to remove the restrictions in Paragraph XVII on the place and manner of use of water stored in Glendo Reservoir.

WHEREFORE, Wyoming requests the Court to modify Paragraph XVII of the Decree to allow the 15,000 acre-feet of storage water in Glendo Reservoir allocated to Wyoming and the 25,000 acre-feet of storage water in Glendo Reservoir allocated to Nebraska to be used directly or by exchange for all beneficial uses under the laws of the respective states.

FOURTH COUNTERCLAIM

19. The procedure for determining transportation or "carriage" losses set forth in Paragraph V of the Decree is no longer factually accurate or equitable.

20. The States of Nebraska and Wyoming and the United States have jointly funded technical studies of the transportation losses addressed in Paragraph V. Such studies demonstrate that sufficient data and technology is now available to make a more accurate estimate of transportation losses than the estimate produced by use of the procedure required by Paragraph V of the Decree.

21. The parties have been unable to agree on a procedure for determining transportation losses that would replace those required by Paragraph V of the Decree.

22. The administration of the apportionment of natural flow under the Decree requires the daily segregation

of natural flow and storage water in the river. A reasonably accurate determination of carriage losses is essential to that administration. In order to carry into effect the apportionment determined by the Court in 1945, as modified in 1953, more accurate procedures and data should be used in determining and assessing transportation losses.

23. Failure to properly assess transportation losses invalidates the segregation of natural flow and storage necessary to administer the decreed apportionment, upsets the equitable balance of the apportionment and injures Wyoming users.

24. The provision in Paragraph V of the Decree dictating the formula for determination of carriage losses is not necessary and unduly complicates the Decree. The State of Wyoming, through the office of the Wyoming State Engineer, has the authority and duty to determine and assess carriage losses for storage water deliveries on every stream in Wyoming.

WHEREFORE, Wyoming requests the Court to amend Paragraph V of the Decree to remove the provisions for determination of carriage losses and to leave such determination to state officials under state law.

FIRST CROSS-CLAIM

25. The allegations in paragraphs 9 through 14 of the first counterclaim are hereby incorporated in this first cross-claim.

26. The United States has circumvented and violated the equitable apportionment, and continues to do so, by operating the federal reservoirs to deliver natural flow water for diversion by Nebraska irrigation canals at and above Tri-State Dam in excess of the beneficial use requirements of the lands entitled to water from those canals under the Decree, by failing to store water in the federal reservoirs when available under Paragraph IV

of the Decree and by bypassing or releasing water to the Nebraska State Line Canals in excess of the diversion limitations and seasonal volumetric limitations fixed in Paragraph IV of the Decree.

27. The United States has circumvented and violated the equitable apportionment, and continues to do so, by operating the federal reservoirs to bypass river flows and release storage water from sources above Tri-State Dam with knowledge of and acquiescence in the bypass or diversion of such water for uses below Tri-State Dam that are not recognized or authorized by the Decree. Specific examples of actions by the United States that undermine the decreed apportionment include,

- a. Operating the federal reservoirs to deliver to Nebraska users more water than is reasonably required when such deliveries result in the return of water unused through wasteways to the North Platte River below Tri-State Dam;
- b. Delivering water substantially in excess of the beneficial use requirements of the lands actually irrigated in Nebraska by honoring demands for water delivery to Nebraska water users based on irrigated acreage estimates that Nebraska and United States officials know are substantially inflated but which Nebraska officials nevertheless use to set the allowable diversion rates;
- c. Failing to require adequate monitoring and measuring of uses of water on Nebraska lands under canals diverting in the Guernsey to Tri-State Dam section of the North Platte River;
- d. Delivering excessive amounts of Glendo Reservoir storage water and North Platte Project storage water under the Warren Act to Nebraska irrigators and acquiescing in the application by Nebraska officials of unreasonably large and unsubstantiated transportation losses in the administration of storage water deliveries below Tri-State Dam, all of which results in substantial quanti-

ties of storage water being passed below Tri-State Dam where such storage water is not used in accordance with the contracts governing its use but is converted from storage water to water available for appropriation by other uses below Tri-State Dam;

- e. Operating the federal reservoirs and canals so as to deliver excessive amounts of natural flow for diversion by the Interstate Canal, resulting in the storage of water in the Inland Lakes during the irrigation season in excess of the storage rights of the Inland Lakes determined by the Court and without regard to whether such water is needed to meet the beneficial use requirements of the lands using water from the Inland Lakes;
- f. Operating the federal reservoirs for the generation of electric power in a manner which interferes with the primary use of the reservoirs for irrigation.

WHEREFORE, Wyoming requests the Court (1) to enjoin the United States' continuing violations of the apportionment, (2) to modify the Decree as necessary to confirm that the equitable apportionment does not allow Nebraska to demand water from Wyoming for use below Tri-State Dam, (3) to modify the Decree as necessary to confirm that, when the water storage rights of the federal reservoirs have not been fully satisfied, those reservoirs may not bypass natural flow to the Nebraska State Line Canals in excess of the diversion limits or annual volumetric limitations fixed in Paragraph IV of the Decree and (4) to enjoin the United States and its officials to operate and administer the federal reservoirs so that water is not released to Nebraska canals in a manner that circumvents the equitable apportionment.

SECOND CROSS-CLAIM

28. The United States has violated Paragraph XVII of the Decree and the federal law governing use of Glendo Reservoir by delivering storage water from Glendo Reser-

voir in the amount of 8,000 acre-feet per year to the Central Nebraska Public Power and Irrigation District for uses other than irrigation and for use as a substitute for storage water previously available under permanent arrangements.

WHEREFORE, Wyoming requests the Court to enjoin further violations of Paragraph XVII of the Decree and federal law by the United States.

THIRD CROSS-CLAIM

29. In the alternative to the second cross-claim, Wyoming incorporates by reference the third counterclaim, including paragraphs 16 through 18, *supra*, and asserts the claim for modification of Paragraph XVII of the Decree set forth therein as a cross-claim against the United States and the State of Colorado.

FOURTH CROSS-CLAIM

30. The equitable apportionment which the Decree was intended to carry into effect was premised in part on the assumption that the United States would operate the federal reservoirs and deliver storage water in accordance with applicable federal and state law and in accordance with the contracts governing use of water from the federal reservoirs.

31. The United States has failed to operate the federal reservoirs in accordance with applicable federal and state laws and has failed to abide by the contracts governing use of water from the federal reservoirs. Specifically, the United States has allocated storage water in a manner which (a) upsets the equitable balance on which the apportionment of natural flow was based, (b) results in the allocation of natural flow contrary to the provisions of the Decree and contrary to the equitable apportionment, (c) promotes inefficiency and waste of water contrary to federal and state law, (d) violates the

contract rights of the North Platte Project Irrigation Districts and violates the provisions of the Warren Act, 43 U.S.C. § 523, which provide for sale of storage water to non-project users only if there is available water "in excess of the requirements of the lands to be irrigated under any project" after "preserving a first right to lands and entrymen under the project" and (e) exceeds the limitations in the contracts under the Warren Act.

32. Such action by the United States has caused water shortages to occur more frequently and to be more severe, thereby causing injury to Wyoming and its water users.

WHEREFORE, Wyoming requests the Court (1) to declare that the United States' allocation procedure is contrary to the equitable apportionment, to applicable federal and state law and to the contracts governing use of water from the North Platte Project, (2) to enjoin the United States' continuing violations of federal and state law and (3) to direct the United States to comply with the terms of its contracts.

FIFTH CROSS-CLAIM

33. The fourth counterclaim, including paragraphs 19-24, *supra*, is hereby incorporated and the claim for modification of Paragraph V of the Decree to provide for more accurate determination of transportation losses is asserted as a cross-claim against the United States and the State of Colorado.

FURTHER GENERAL ALLEGATIONS

34. The past and continuing violations of the Decree or the equitable apportionment intended to be effected by the Decree by Nebraska and the United States have caused and continue to cause irreparable injury to Wyoming and its citizens. The waste of water delivered to Nebraska canals has caused water shortages to occur more frequently and to be more severe, has resulted in calls by the United States for regulation or curtailment

of Wyoming water rights that are junior to the federal reservoirs, and has interfered with potential water development in Wyoming that would have otherwise taken place under the equitable apportionment.

35. Wyoming has no adequate remedy at law to enforce its rights against Nebraska and the United States. Injunctive relief is necessary to enforce the Decree, to modify the Decree where necessary to carry out the previously determined equitable apportionment and to restrain further circumvention and violation of that apportionment by Nebraska and the United States.

WHEREFORE, Wyoming prays that the Court enter an order granting judgment for Wyoming on the counter-claims and cross-claims asserted herein, enjoining Nebraska and the United States from further violations of the Decree, providing for additional relief as necessary to carry into effect the previously determined equitable apportionment of the North Platte River and granting such further relief as the Court may deem just and proper.

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